

Atty Dkt. No.: SMAR-018DIV
USSN: 10/666,005

REMARKS

In view of remarks put forth below, the Examiner is respectfully requested to withdraw the rejections and allow Claims 11 to 12, as well as newly added claims 20 to 26, the only claims pending and under examination in this application.

Claim 1 has been amended to specify that the front opening of the jacket is defined by a curved slide fastener that is closable so that in a closed position a portion of the slide fastener is disposed vertically along the anterior midline of the jacket and the slide fastener curves laterally and extends upwardly into the collar so that the slide fastener in the closed position holds the collar closed over the wearer's neck with the slide fastener offset from the anterior midline of the collar so that a slider at the top of the slide fastener in the closed position is offset from the anterior midline of the collar. Support for this amendment may be found throughout the specification and figures, e.g., the paragraph bridging pages 2-3 and Figs. 1, 3, 4, 7, 9 and 10.

The amendments to the claim were made solely in the interest of expediting prosecution, and are not to be construed as acquiescence to any objection or rejection of any claim and without intent to surrender any subject matter encompassed by the originally filed claims (i.e., the pre-amended claims). The Applicants expressly reserve the right to pursue any subject matter encompassed by the originally filed claims in one or more continuation and/or divisional applications.

Claims 13-19 have been canceled.

Claims 20 to 26 have been added. These claims find full support in previously presented claims 13 to 19.

The specification has been amended to specify that the instant application is a division of US Patent Application Serial No. 09/903,344, filed on July 10, 2001, now Patent No. 6,654,963.

As no new matter has been added by the amendments, the Applicants respectfully request the entry thereof.

INFORMATION DISCLOSURE STATEMENT

The Examiner states that the information disclosure statement (IDS) filed 09/17/03 fails to comply with the provisions of 37 CFR §1.97, §1.98 and MPEP §609 because it does not have the current application serial number located thereon. The Applicants respectfully submit that

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they are unaware of any requirement of 37 CFR § 1.97, § 1.98 or MPEP § 609 that states that in order to be considered by the Examiner, an information disclosure statement filed in a divisional application must have the current application serial number located thereon and request the Examiner to direct the Applicants attention to the exact location of 37 CFR 1.97, 1.98 and MPEP 609 which speaks to such requirement. In fact, since the IDS was filed concurrently with the instant application, a serial number was not yet assigned to the instant application.

Furthermore, the Examiner states that sending in a copy of a PTO-892 from another application is not proper format for an IDS and as such it has been placed in the file but the information referred to therein has not been considered as to the merits.

The Applicants are not aware of any requirement that states that copies of previously submitted PTO-892 forms are not proper formats for an Information Disclosure Statement and preclude consideration of the information referred to therein and request the Examiner to direct the Applicants attention to the exact location of 37 CFR 1.97, 1.98 and MPEP 609 which states such.

Regardless, as noted in the IDS submitted 09/17/03, **"All of the references identified therein were disclosed in parent application serial number 09/903,344, filed 7/10/2001 and as such, copies thereof are not included pursuant to the provisions of 37 CFR § 1.98(d)."** (emphasis added)

As noted in the MPEP at 609 (I)(2):

The Examiner will consider information which has been considered by the Office in a parent application when examining...a divisional application...Such information need not be resubmitted in the continuing application unless the applicant desires the information to be printed on the patent.

Accordingly, although the Examiner states that the information provided in the IDS submitted 09/17/03 has not been considered as to the merits, the MPEP requires the Examiner to consider the information because it is information which has been considered by the Office in the parent application. Furthermore, since the information has been properly resubmitted in the instant divisional application, the Applicants request such to be printed on the patent, as required by the MPEP.

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Furthermore, to ensure that the references are properly considered, enclosed please find Supplemental Information Disclosure Statement.

CONTINUING DATA

The Examiner requests that the specification be amended to include the patent number of the parent application. The specification has been amended as requested by the Examiner.

REJECTION UNDER 35 U.S.C. §102

Claim 11 is rejected under 35 U.S.C. 102(b) as anticipated by Selib (US 2,248,288).

As described above, Claim 11 has been amended to specify that the curved slide fastener is closable so that in a closed position a portion of the fastener is disposed vertically along the anterior midline of the jacket and the slide fastener curves laterally and **extends upwardly into the collar** so that in a closed position the fastener holds the collar closed **over the wearer's neck with the slide fastener offset from the anterior midline of the collar** so that a slider at the top of the fastener is offset from the anterior midline of the collar. Accordingly, the instant invention provides a curved slide fastener configured to, in a closed position, hold a high collar closed and which is offset from a position over the wearer's mouth (see for example Fig. 1).

Selib does not teach such a jacket. The fastener does not extend upwardly into the collar 26 of the raincoat at all, as claimed in Claim 11, and instead terminates at or close to the neck portion 20 of the raincoat. Since Selib does not teach that the fastener extends upwardly into the collar of the raincoat, Selib also fails to teach that in a closed position, the fastener holds the collar closed over the wearer's neck with the slide fastener offset from the anterior midline of the collar so that a slider at the top of the fastener is offset from the anterior midline of the collar.

For at least these reasons, Claim 11 is not anticipated by Selib. Accordingly, the Applicants respectfully request that this rejection be withdrawn.

REJECTION UNDER 35 U.S.C. §103

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Selib (US 2,248,288) in view of Norvell (US 5,386,616).

Claim 12 depends from Claim 11. As described above, Selib does not teach a jacket having a curved slide fastener as specified in Claim 11. Furthermore, Selib does not suggest a

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jacket having a curved slide fastener as claimed for at least the reason that Selib specifically teaches that the fastening means terminates at or near the neck portion of the raincoat, i.e., the fastening means of Selib clearly does not extend upwardly into the collar of the raincoat in a closed position and thus it is clearly not offset, in a closed position, from the anterior midline of the collar so that a slider at the top of the slide fastener in the closed position is offset from the anterior midline of the collar. Since Norvell is cited solely for describing a fastener coated with a thermoplastic polymer, Norvell fails to make up for the fundamental deficiencies of Selib.

For at least these reasons, Claim 12 is patentable over Selib in view of Norvell. Accordingly, the Applicants respectfully request that this rejection be withdrawn.

Finally, with respect to new claims 20 to 26, it is noted that each of these claims is dependent, either directly or indirectly, to claim 11, and therefore fall within the scope of the elected invention and are allowable.

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CONCLUSION

In view of the remarks, this application is considered to be in good and proper form for allowance and the Examiner is respectfully requested to pass this application to issue.

The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§ 1.16 and 1.17 which may be required by this paper, or to credit any overpayment, to Deposit Account No. 50-0815, order number SMAR-018DIV.

Respectfully submitted,
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Date: October 1, 2004

By: 

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enc: Information Disclosure Statement

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